

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

KELLY MILLIGAN,
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INC., BANK OF AMERICA CORP.,
and JOHN/JANE DOE 1, THE SENIOR VICE
PRESIDENT–HUMAN RESOURCES
GLOBAL BANKING AND GLOBAL
WEALTH AND INVESTMENT
MANAGEMENT ADMINISTRATION AT
BANK OF AMERICA CORP.,

Defendants.

Case No. 3:24-cv-00440-KDB-DCK

Judge Kenneth D. Bell
Magistrate Judge David Keesler

CLASS ACTION

**JOINT MOTION REGARDING BRIEFING SCHEDULE
FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Kelly Milligan (“Plaintiff”) and Defendants Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) and Bank of America Corp. (“Bank of America”) (together, “Defendants”), by and through their attorneys, respectfully move this Court for an order setting an interim deadline of Friday, October 18, 2024, for the parties to conclude their meet-and-confer efforts regarding certain discovery issues and to propose a schedule for such discovery, Plaintiff’s response to Defendants’ Motion for Summary Judgment (ECF No. 41), and Defendants’ reply.

In support of this Joint Motion, the parties state as follows:

1. This case asserts claims under ERISA. However, the parties dispute whether ERISA applies to the WealthChoice Contingent Award Plan at issue in this matter. *See generally* Complaint (ECF No. 1); Defendants’ MSJ (ECF No. 41).

2. On September 30, 2024, Defendants filed a Motion for Summary Judgment. Under the Local Rules and the parties' current pretrial order, the deadline for Plaintiff's opposition brief was October 15, 2024. *See* L.R. 7.1(e); Pretrial Order and Case Mgmt. Plan at II.C (ECF 36).

3. On October 7, 2024, the parties filed a joint motion for extension of time regarding the briefing schedule for Defendants' motion for summary judgment. (ECF No. 46.) The purpose of this joint motion was to allow the parties time to confer regarding the scope of the discovery Plaintiff maintains he requires in order to respond to Defendants' motion for summary judgment. (*Id.*) The Court granted this joint motion on October 8, 2024. (ECF No. 47).

4. Both before and since the filing of their joint motion, counsel for the Parties have worked cooperatively to discuss a potential briefing schedule, as well as related discovery issues. Specifically, on October 4, 2024, counsel for Plaintiff and counsel for Defendants held a telephonic conference to discuss these issues. Counsel for the Parties then conferred again by videoconference on October 9, 2024. In the afternoon of October 10, 2024, counsel for Plaintiff sent Defendants a written proposal regarding a proposed schedule, which first envisioned a short period of time for the parties to complete their discussions over the appropriate scope of discovery that Plaintiff asserts is needed to oppose Defendants' motion for summary judgment, followed by an additional time period to conclude such discovery, if any.

5. Defendants are actively considering Plaintiff's proposal and will promptly respond to it. Based on that proposal, however, the parties agree that it would be more efficient to propose a summary judgment discovery (if any) and briefing schedule to the Court only after the parties have had the full opportunity to either resolve or narrow any outstanding disputes over the scope of Plaintiff's requested discovery. The scope of such discovery, if any, will impact whether and

to what extent the parties can agree on a briefing schedule and the potential length and/or timing of such schedule.

6. To appropriately finalize the conferral process discussed above, the parties respectfully request that the Court set an interim deadline of October 18, 2024, for the parties to (i) conclude discussions over the scope of discovery, if any, relating to Defendants' summary judgment motion, and (ii) file a motion proposing a schedule for such discovery (if any) and revised deadlines for the remaining briefing on Defendants' Motion for Summary Judgment.

7. For similar reasons, the parties also respectfully request that the Court vacate their current deadline for designating a mediator in this matter, which is currently October 11, 2024. (ECF No. 36). The parties intend to address this deadline as well in their forthcoming motion regarding the deadlines for briefing Defendants' summary judgment motion.

8. This Motion is filed for good cause and not for delay or any other improper purpose.

9. Pursuant to Local Civil Rule 7.1(b), the parties' counsel conferred regarding the relief sought in this Motion and submit this Motion as a joint filing.

Dated: October 11, 2024

Respectfully submitted,

By: /s/ Zachary L. McCamey

By: /s/ John D. Hurst

Zachary L. McCamey, NC State Bar #53540
Robert A. Muckenfuss, NC State Bar #28218
MCGUIRE WOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2000
(704) 343-2300
zmccamey@mcguirewoods.com
rmuckenfuss@mcguirewoods.com

Sari M. Alamuddin (*pro hac vice*)
Matthew A. Russell (*pro hac vice*)
Eric M. Makinen (*pro hac vice* forthcoming)

John D. Hurst
N.C. Bar No. 37680
MOTLEY RICE LLC
50 Clay Street, Suite 1
Morgantown, WV 26501
Telephone: (304) 413-0456
Facsimile: (304) 413-0458
jhurst@motleyrice.com

Mathew P. Jasinski*
Douglas P. Needham*
M. Zane Johnson
MOTLEY RICE LLC

MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
(312) 324-1000
(312) 324-1001 (fax)
sari.alamuddin@morganlewis.com
matthew.russell@morganlewis.com
eric.makinen@morganlewis.com

Attorneys for Defendants

27 Church Street, 17th Floor
Hartford, CT 06103
Telephone: (860) 882-1681
Facsimile: (860) 882-1682
mjasinski@motleyrice.com
dneedham@motleyrice.com
zjohnson@motleyrice.com

Thomas R. Ajamie*
John S. "Jack" Edwards, Jr.*
Courtney D. Scobie*
AJAMIE LLP
Pennzoil Place - South Tower
711 Louisiana, Suite 2150
Houston, TX 77002
Telephone: (713) 860-1600
Facsimile: (713) 860-1699
tajamie@ajamie.com
jedwards@ajamie.com
cscobie@ajamie.com

Robert A. Izard*
Craig A. Raabe*
Seth R. Klein*
Christopher M. Barrett*
IZARD, KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Tel: (860) 493-6292
Fax: (860) 493-6290
rizard@ikrlaw.com
craabe@ikrlaw.com
sklein@ikrlaw.com
cbarrett@ikrlaw.com

*Admitted *pro hac vice*.

Attorneys for Plaintiff